

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-861

November 8, 2000

VERIZON NEW ENGLAND INC.  
D/B/A VERIZON MAINE  
Request for Approval of  
Resale Agreement with  
Telergy Network Services, Inc.

ORDER APPROVING  
RESALE AGREEMENT

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, we approve a resale agreement between New England Telephone and Telegraph Company d/b/a Bell Atlantic and Telergy Network Services, Inc. (Telergy), pursuant to section 252 of the Telecommunications Act of 1996.

On October 16, 2000, Verizon Maine filed a negotiated Resale Agreement with Telergy, pursuant to 47 U.S.C. § 252, enacted by the Telecommunications Act of 1996. An agreement reached pursuant to that provision may allow a telecommunications carrier to purchase unbundled network elements, or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an incumbent local exchange carrier (ILEC) or competitive local exchange carrier (CLEC).

The agreement incorporates terms and conditions of a separate interconnection agreement (including, as Attachment A, a document containing terms and conditions), between Bell Atlantic and CTC Communications Corp. approved by the Commission on January 6, 1998 in Docket No. 97-931 (the "Separate Agreement," attached as Appendix 1 to the agreement filed in this proceeding). On August 1, 2000, Bell Atlantic changed its name to Verizon New England Inc. d/b/a Verizon Maine.

Telergy will pay to Verizon Maine the discounted prices contained in the voluntary agreement that was reached pursuant to arms-length negotiations between the parties. The pricing standards contained in 47 U.S.C. § 252(d) apply only to arbitration proceedings under section 252(b) and not to negotiated agreements under section 252(a). Verizon Maine does not represent that the prices contained in the Agreement are consistent with the section 252(d) pricing standards or with any other state or federal policy.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We received no comments by the comment deadline set in an October 19, 2000, Notice of Agreement and Opportunity to Comment. We do not make either of the

findings set forth in section 252(e)(2) for rejection, and we therefore approve the agreement.

We qualify our approval in two respects, however, and reserve findings on future potential issues. First, we reserve judgment on whether the rates contained in the agreement are reasonable from the perspective of Verizon Maine's retail ratepayers. Verizon Maine is presently under an alternative form of regulation (AFOR) ordered by the Commission in Docket No. 94-123. The AFOR began in December, 1995. Under the AFOR, Verizon Maine bears the risk of lost revenues resulting from rates that are too low. In Docket No. 99-851, we have proposed to continue the AFOR beyond five years in modified form. We do not resolve whether Verizon Maine is receiving reasonable compensation from any CLECs that may avail themselves of the rates provided to Telergy pursuant to 47 U.S.C. § 252(i).

Second, section 271(c) of the Act, 47 U.S.C. § 271(c), requires that the Bell Operating Companies (BOCs) meet certain requirements before they are allowed to provide interLATA service (the so-called "competitive checklist"). Under section 271(d)(3), the Federal Communications Commission (FCC) must determine whether the BOC has met the competitive checklist before granting the BOC authority to provide interLATA service within its region. Prior to making that determination, the FCC must consult with state commissions in order to verify the compliance of the BOC with the checklist. Our approval of this Agreement should not be construed as a finding that Verizon Maine has met those requirements.

The agreement filed by Verizon Maine provides for resale of Verizon Maine's services in Maine by Telergy. If Telergy seeks to interconnect with networks maintained by independent local exchange carriers in Maine, or to resell services offered by those carriers, it must seek a termination, suspension, or modification of the exemption contained in 47 U.S.C. § 251(f)(1)(A).

Separately, in Docket No. 99-496, Telergy has petitioned for a finding of public convenience and necessity to provide local exchange telecommunications services in Maine. We will consider that petition separately.

## **ORDERING PARAGRAPHS**

Accordingly, we

1. Approve the Resale Agreement between New England Telephone and Telegraph Company and Telergy Network Services, Inc., attached hereto, pursuant to 47 U.S.C. § 252(e);
2. Order that Telergy Network Services, Inc. shall not provide local exchange telephone service until the Commission grants authority to Telergy Network Services,

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.